IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9776 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAMAL GOKUL CHHARA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9776 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS NANDINI JOSHI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 07/05/2003

ORAL JUDGEMENT

1. By this petition under Article 226 of the

Constitution of India, the petitioner- detenu has challenged the legality and validity of the order of detention dated 17.9.2002 passed against him by the Police Commissioner, Ahmedabad City in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) the petitioner-detenu. The detenu has been branded as "bootlegger" within the meaning of Section 2(b) of the PASA Act.

2. The ld.AGP Ms. Joshi has pointed out from the grounds for detention supplied to the detenu petitioner indicate that the petitioner was found involved in six different offences punishable under Sections 66B, 65AE, 81 etc of the Bombay Prohibition Act and on all occassions, according to the prosecution, country-made liquor was found and it is stated that such prohibited liquor is the hanging sword on the health of the public at large and such activities are highly prejudicial to the public health and maintenance of public order. While recording subjective satisfaction, the detaining authority has also placed reliance on the statements of two secret witnesses.

3. The petitioner has challenged the legality and validity of the order of detention on number of grounds mentioned in the memo of the petitioner. However, the ld. counsel Mr. Prajapati for the petitioner-detenu, has mainly focussed his arguments on one ground and has mainly concentrated his arguments on two grounds. Firstly, it is submitted that alleged activities of the petitioner-detenu mentioned in the grounds of detention cannot be said to be activities affecting the public order. So, the Commissioner of Police has no scope to exercise jurisdiction or powers vested in him under Section 3(2) of the PASA Act.

4. The subjective satisfaction recorded by the authority says that the activities of the petitioner-detenu affect the "public order" is neither legal nor logical. At the most, it can be said that the activities fall under the category which can be said to be adverse to the law & order situation in the society. Ld. counsel Mr. Prajapati has taken me through the grounds of detention and relevant record available and has submitted that when the order of detention was passed and served on the detenu, he was in judicial custody and has not applied for bail and, therefore, this aspect which is important was required tobe considered which is not considered and hence the impugned order of detention

requires to be quashed and set aside.

5. The second point raised by ld. counsel Mr. Prajapati for the detenu is that the detaining authority has not applied its mind while passing the order of detention. In the present case, sponsoring machinery has sent papers to the detaining authority at any time afater 12.9.2002. Bunch of papers supplied by the authority to the detenu clearly indicates that the statements of those secret witnesses were verified by the authority on 16.9.2002 and the order of detention undisputedly is passed on 17.9.2002. This shows non-application of mind. These submissions of Mr. Prajapati are based on the decision of this Court in the case of Ranubhai B.Bharwad reported in 2000(3) GLR 2696 wherein this Court has held that the detaining authority is supposed to apply its mind and considering important aspect before passing the order of detention. It is not necessaaary to quote relevant part of the decision cited by Mr. Prajapati, but in similar facts situation, this Court has even held that passing of the detention order on the very next day, can be said to be exercise of powers without application of mind and can be equated with mechaniical exercise of the powers.

6. In view of settled legal position on the points raised by ld. counsel Mr. Prajapati, I am in agreement with his submissions and hence impugned order of detention fails and requires to be quashed and set aside on aforesaid two grounds alone.

7. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 17.9.2002 passed by the Commissioner of Police, Ahmedabad City, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

07-5-2003 [C. K.BUCH, J]

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